

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of all Claims (the "Agreement") is entered into by, between, and among the State of California, acting by and through its Department of Transportation ("Caltrans"), the County of Madera and the Madera County Board of Supervisors (collectively referred to as "County"), and Tesoro Viejo, Inc and Rio Mesa, LLC including their successors and assigns (collectively referred to as "Owner"). Caltrans, County, and Owner are collectively referred to as the "Parties."

RECITALS

A. WHEREAS, Caltrans is an agency in the executive branch of the State of California, operating within the Business, Transportation and Housing Agency. It operates a multi-modal transportation system across the State, and is responsible for the planning, building and maintenance of that system.

B. WHEREAS, County is a political subdivision of the State of California, organized and existing under the laws of the State of California.

C. WHEREAS, Tesoro Viejo, Inc is a master developer, and a proponent of the Tesoro Viejo Specific Plan.

D. WHEREAS, Rio Mesa, LLC is the owner of the property that is proposed to be developed according to the Tesoro Viejo Specific Plan.

E. WHEREAS, the County approved the Tesoro Viejo Specific Plan, which includes 5,190 dwelling units along with approximately 3 million square feet of non-residential land uses located in the County of Madera (the "Proposed Development").

F. WHEREAS, as part of the environmental process for the Proposed Development, a Revised Final Environmental Impact Report (REIR) was prepared, and that REIR determined that the Proposed Development would result in significant traffic impacts to the state highway system (the "Impacts").

G. WHEREAS, in 1995, Caltrans prepared a Tier 1 Environmental Impact Statement (EIS)/EIR (the "Tier 1 EIR") for purposes of identifying a preferred freeway alignment for State Route 41 ("SR-41") between El Paso Avenue in Fresno County and north of State Route 145 in Madera County.

H. WHEREAS, Caltrans and the County entered into that certain Freeway Agreement, dated May 23, 1995 (the "Freeway Agreement").

I. WHEREAS, on December 14, 2012, Caltrans commenced the legal action against County entitled *California Department of Transportation v. Madera County*, et al., Madera County Superior Court case number MCV062237 (the "Action"). Owner was named as a Real Party in Interest in the Action. Caltrans alleged in the Action that the County violated the California Environmental Quality Act ("CEQA") by approving the Proposed Development and failing, among other things, to adequately identify and mitigate the Impacts. Caltrans also alleged that the County violated CEQA and Government Code § 65860 by rezoning the land within the Tesoro Viejo Specific Plan in a manner that effectively precludes the implementation of the upgrade and realignment of SR-41 as provided in the Freeway Agreement and identified in the Madera County General Plan and Rio Mesa Area Plan.

J. WHEREAS, the Parties now desire to resolve and settle the claims, complaints, and disputes arising from or involving the alleged Impacts and the alleged preclusion of implementing the upgrade and realignment of SR 41, including the disputes and the claims alleged in the Action.

K. WHEREAS, due to the passage of time and changed circumstances a re-evaluation of the future of SR-41 is appropriate (the "Reevaluation").

L. WHEREAS, the Reevaluation is not intended to alter the adopted alignment of SR 41 between Avenue 11 and Avenue 12.

M. WHEREAS, the Madera County Transportation Commission is pursuing the possibility of having the SR-41 corridor designated as a High Emphasis Focus Route.

N. WHEREAS, the Parties agree and mutually acknowledge that this Agreement is for settlement purposes only. This Agreement is entered into, in substantial part, to avoid the fees and expenses attendant with continued litigation of the claims and defenses asserted and the possibility of an appeal, and to provide a framework for the Parties to further work cooperatively in a non-litigation context to provide mitigation for the Impacts and determine and implement long-term improvements to SR-41. The Parties agree that this Agreement shall be inadmissible as evidence of liability or damages in the Action.

AGREEMENT

1. Recitals. The Parties acknowledge that the recitals stated above are true and correct and incorporate those recitals by reference into this Agreement.
2. Effective Date. This Agreement will become effective on the date on which it has been approved by (1) the Madera County Board of Supervisors on behalf of County; (2) by the District 6 Director on behalf of Caltrans; (3) by Tesoro Viejo, Inc; and (4) by Rio Mesa, LLC and fully executed counterpart originals have been exchanged among the Parties ("Effective Date")
3. Dismissal of Lawsuit. Within ten (10) days of the Effective Date, Caltrans shall dismiss the Action in its entirety and with prejudice.
4. Reevaluation. Caltrans and the County agree to cooperate in the Reevaluation of the future character, alignment, and improvements to SR-41 near Avenue 11 to near County Road 209, including consideration of a reasonable range of alternative highway types and alignments.
 - 4.1 Purpose. The purpose of the Reevaluation is to select a preferred alternative for the future upgrading and possible realignment of SR-41 near Avenue 11 to near County Road 209 that will adequately handle the traffic impacts under the General Plan and Rio Mesa Area Plan. Neither the form nor the location of such upgrades can be considered to be preferred until the Reevaluation is concluded, and this Agreement is not intended to exclude consideration of any reasonable alternatives.
 - 4.2 Environmental Clearance. The Reevaluation shall be performed in accordance with the California Environmental Quality Act (CEQA) and, if necessary, National Environmental Policy Act (NEPA).
 - 4.3 Lead Agency. Caltrans will serve as lead agency for purposes of any CEQA and, if necessary, NEPA evaluation for the Reevaluation.
 - 4.4 Responsible and Implementing Agency. County will be a responsible agency and the "implementing agency" as that term is defined in the Caltrans Project Development Project Procedures Manual for the Reevaluation.
 - 4.5 Funding for Reevaluation. County agrees to fund the costs of the Reevaluation. Funding for the Reevaluation will be provided by the Madera County

Road Impact Fee Program, developer contributions, and any other appropriate funding sources.

4.6 Consultant of Choice. County will enter into a subsequent cooperative agreement with Caltrans for the purpose of utilizing Caltrans as the consultant of choice to perform the Reevaluation. Caltrans will provide periodic invoices to the County for work performed by Caltrans in its role as consultant of choice.

4.7 Project Initiation Document. The Parties agree that a Project Initiation Document (PID) will be prepared. County will enter into a subsequent cooperative agreement with Caltrans for the purpose of utilizing Caltrans as the consultant of choice to prepare the PID. Caltrans will seek approval to prepare the PID at no cost to the County, but if approval is not received the County agrees to enter into a cooperative agreement to reimburse Caltrans for the cost to prepare the PID.

4.8 Subsequent Cooperative Agreement. County also agrees to enter into a cooperative agreement with Caltrans prior to the initiation of the Reevaluation that will outline the financing plan, timetable, and the roles and responsibilities of both parties for the implementation of the upgrades to and possible realignment of SR-41, including, but not limited to, Project Approval and Environmental Document (PA&ED) Phase, Plans Specifications & Estimates phase; right-of-way acquisition phase; and construction phase.

5. Preservation of Land within Reevaluation Study Area. In order to permit the Reevaluation work to be performed and the preferred alternative to be selected, Owner agrees not to construct any improvements within the Reevaluation study area of the potential SR-41 alignment alternatives, as shown on Exhibit A, which is attached hereto and incorporated by reference into this Agreement (the "Reevaluation Study Area"), until the Reevaluation is complete and the preferred alternative has been identified in a final environmental document prepared pursuant to CEQA, and NEPA if applicable, provided, however, that this restriction shall terminate as of July, 2016. Notwithstanding the foregoing, Owner may, with the concurrence of Caltrans, develop any portion of the land or construct, at its own risk, temporary or permanent buildings, transverse utilities, and roads within the Reevaluation Study Area.

5.1 At Its Own Risk. The Parties understand and agree that "at its own risk" means that if any improvement, constructed by Owner within the land areas and timeframes described herein, must be removed or demolished in order to preserve the land for the preferred alternative, the costs of such removal or demolition will be

borne by Owner, such removal or demolition will not constitute a taking, and the value of such improvement will not be considered in the valuation for the acquisition of the land. Additionally, any decision by Owner to develop land or construct within the Reevaluation Study Area shall not be used as justification for eliminating an alternative being considered in the Reevaluation.

6. Preservation of Right-of-way for Preferred Alternative.

6.1 Reservation by Owner. Upon designation of a preferred alternative following appropriate analysis under CEQA/NEPA, if applicable, Owner agrees to reserve land consistent with the necessary right-of-way on the land designated as the preferred alternative for sale to the appropriate governmental entity at fair market value at such time as such freeway or otherwise designated expressway has been fully planned and has a timetable for implementation. Right of way for the preferred alternative will be recorded with the County through the tentative and final parcel map process. Caltrans access control will be included on the subdivision maps. Subject to Caltrans' discretionary approval and in compliance with Caltrans' standards, Caltrans agrees to grant one or more transverse easements to the appropriate entity(ies) for the placement of underground utilities that are necessary or appropriate to serve the development within the Tesoro Viejo Specific Plan, including but not limited to water, gas, electrical, and fiber optic lines, within the right-of-way of the preferred alternative. County and Owner agree to work together to acquire, including, if necessary, through condemnation, a utility easement outside and adjacent to the Caltrans right-of-way. Caltrans shall not participate in, nor shall Caltrans have any role whatsoever in, the creation or acquisition of such easement.

6.2 County's Responsibility. For any other proposed projects within the vicinity of the Rio Mesa area, the County will require the property owner(s) to dedicate or preserve the land that will be utilized for the preferred alternative for SR-41 as a condition of project approval, where permitted to do so. Tentative and final maps will record the future facility and interchanges for record. County may use funds from the Madera County Road Impact Fee Program, or any other appropriate source of funding, to acquire parcels, if necessary.

7. Transfer of Land. In the event Owner transfers any land within the Reevaluation Study Area, Owner agrees that such transfer will include the preservation of the Reevaluation Study Area, the reasonable range of alternatives, and the preferred alignment consistent with this Agreement.

8. Freeway Agreement. Once the Reevaluation is complete, Caltrans and County will either amend the existing Freeway Agreement or enter into a new agreement as they deem appropriate.

9. Funding Plan. County will develop, in cooperation with Caltrans and the Madera County Transportation Commission, a financing plan that fully funds the improvements to SR-41, includes a CEQA approved mitigation fee program ("Fee Program"), and takes into account the near-term improvements, long-term improvements, and right-of-way acquisitions within Madera County that are identified as the preferred alternative. The financing plan will use the Level of Service (LOS) D/E as defined in the Transportation Research Board's "Highway Capacity Manual" as the triggering threshold for when the long-term improvements will be implemented. County will continue to impose and collect fees pursuant to CEQA and the Fee Program as a condition of project approval where a proposed development contributes trips to SR-41. The updates to the Madera County Road Impact Fee Program will be applied to the Proposed Development except to the extent that the Owner is entitled to credits against such fees. The Fee Program updates shall occur not less than every three years or as agreed to by the County, Madera County Transportation Commission, and Caltrans.

10. Near-term Highway Improvements. The Parties agree that near-term improvements to SR-41 between Avenue 12 and Avenue 15 will be needed and will be implemented through a separate encroachment permit application in accordance with Caltrans policies and will be designed to sufficiently handle traffic conditions until the preferred alternative needs to be and can be constructed. The Owner will submit complete encroachment permit applications for the appropriate near-term improvements according to the timelines referenced in Exhibit B of the Development Agreement. All costs associated with obtaining an encroachment permit, including any environmental clearances, and constructing the near-term improvements shall be borne by County through the Madera County Road Impact Fee Program or other appropriate funding sources and by the respective developer of whom improvements have been required.

11. Releases.

11.1 Caltrans' Release. Except as provided in this Agreement, Caltrans, on its own behalf and on behalf of its attorneys, representatives, assigns and successor-in-interest, hereby releases and forever discharges County and Owner and their attorneys, representatives, assigns, and successors-in-interest from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and

attorneys' fees, of every kind and character, known or unknown, existing or contingent, latent or patent, including, but not limited to, any matter alleged in, arising from or related to the Proposed Development, as described in the REIR or the Action.

11.2 County's Release. Except as provided in this Agreement, County, on its own behalf and on behalf of its attorneys, representatives, assigns and successor-in-interest, hereby releases and forever discharges Caltrans and its attorneys, representatives, assigns, and successors-in-interest from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorneys' fees, of every kind and character, known or unknown, existing or contingent, latent or patent, including, but not limited to, any matter alleged in, arising from or related to the Proposed Development, as described in the REIR or the Action.

11.3 Owners' Release. Except as provided in this Agreement, Owners, on its own behalf and on behalf of its attorneys, representatives, assigns and successor-in-interest, hereby releases and forever discharges Caltrans and its attorneys, representatives, assigns, and successors-in-interest from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorneys' fees, of every kind and character, known or unknown, existing or contingent, latent or patent, including, but not limited to, any matter alleged in, arising from or related to the Proposed Development, as described in the REIR or the Action.

12. Voluntary Nature of Agreement and Advice of Counsel. The Parties represent and warrant that they fully understand and voluntarily accept each of the terms of this Agreement and their consequences, and that they have sought and received the advice of their attorneys prior to executing this Agreement.

13. Notices. Any notices required under this Agreement shall be sent to the following:

To Caltrans:

Caltrans, Legal Division
ATTN: Brandon S. Walker
1120 N Street, P.O. Box 1438
Sacramento, CA 95812-1438

To County:

Madera County Counsel
200 West 4th Street
Madera, CA 93637

To Owner:

Brent M. McCaffrey
7020 North Van Ness Blvd
Fresno, CA 93711

Notices given pursuant to this Agreement shall be deemed received as follows:

- (a) If sent by United States Mail – five (5) calendar days after deposit into the United States Mail, first class postage paid.
- (b) If by facsimile – upon transmission and actual receipt by the receiving party.
- (c) If by express courier service or hand delivery – on the date of receipt by the receiving party.

The addresses to notices set forth in this section may be changed upon written notice of such change to Owner, County or Caltrans, as appropriate.

14. Waiver of Fees and Costs. Caltrans hereby waives any claim it may have against the County and Owner, and the County and Owner hereby waive any claim they may have against Caltrans, for attorneys' fees or costs associated with the prosecution or defense of the Action and/or the negotiation and drafting of this Agreement.

15. Effect of Agreement. This Agreement is binding upon and shall inure to the benefit of the Parties, their respective agents, attorneys, and representatives, assigns and successors-in-interest, to the extent permitted by law.

16. Authority of Signatories. Each person executing this Agreement does hereby represent and warrant to the other signatories that he or she has the authority necessary to execute this Agreement; that no other consents or approvals of anyone are required or necessary for this Agreement to be binding; and that they have respectively not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, causes of action, demands, damages, judgments, costs, loss of services, expenses and/or compensation referred to in this Agreement.

17. Dispute Resolution/Choice of Law/Venue. The Parties agree that should a dispute arise as to the terms of this Agreement, the Parties will make a good faith effort to resolve the dispute through mediation prior to seeking judicial action. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California. Should any judicial proceeding be brought relating to this Agreement, venue shall lie exclusively in a court of competent jurisdiction located in Madera County, or if no such court can be found in Madera County, a court of competent jurisdiction closest to Madera County.

18. State Appropriations. All of Caltrans' obligations under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of resources by the California Transportation Commission. This provision does not apply to the obligation to dismiss and release set forth in Paragraphs 3 and 11.1.

19. Jointly Drafted. This Agreement was jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. This Agreement shall be liberally construed to accomplish its purpose. The Parties hereby agree to execute and deliver such further documents and to do such other acts and things as are reasonably necessary and appropriate to effectuate the purposes of this Agreement as set forth herein.

20. Severability. Should any term of this Agreement be deemed unlawful, that provision shall be severed and the remaining terms shall continue to be valid and fully enforceable.

21. Attorneys' Fees. If an action is brought to recover damages, obtain equitable relief, or both, to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees as part of its costs from the other party.

22. Duplicate Originals. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement that shall be binding on all of the Parties, notwithstanding that all of the Parties are not signatory to the original or the same counterpart.

23. Entire Agreement. This Agreement contains the entire agreement between the Parties, and supersedes and replaces any and all prior or contemporaneous

agreements or understandings, written or oral, with regard to the matter set forth herein.

24. Modification. This Agreement may be amended or modified in whole or in part at any time, only by an agreement in writing, executed in the same manner as this Agreement.

25. Headings. Paragraph headings used in this Agreement are for the convenience of the Parties only and shall not be considered in interpreting or construing this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as set forth below.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: Sharri Bender Ehlert 5/3/2013

Sharri Bender Ehlert, District 06 Director

Approved as to Form and Procedure

Brandon S. Walker 5/3/2013

Brandon S. Walker, Deputy Attorney

COUNTY OF MADERA

By: Max Rodriguez 5/7/2013

Max Rodriguez, Chairman

Madera County Board of Supervisors

OWNER

By: Robert A. McCaffrey 5/3/13

Robert A. McCaffrey, President/CEO

Tesoro Viejo, Inc./Rio Mesa, LLC

Approved as to Form:
COUNTY COUNSEL

By: [Signature]